



**CITY OF EL PASO, TEXAS
PLANNING, RESEARCH & DEVELOPMENT DEPARTMENT**

MEMORANDUM

TO: The Honorable Mayor and City Council
Jim Martinez, Chief Administrative Officer
Patricia D. Adauto, Deputy Chief Administrative Officer
Laura Uribarri, Executive Assistant to the Mayor
Adrian Ocegueda, Executive Assistant to the Mayor

FROM: Raymond Bonilla Plan Reviewer I

SUBJECT: Council Agenda Item
Introduction: June 15, 2004
Public Hearing: June 29, 2004

DATE: June 10, 2004

The following item has been scheduled for City Council action as noted above. If you have any questions, I may be contacted at 541-4767.

AN ORDINANCE GRANTING A SPECIAL PRIVILEGE TO THE CENTRAL BUSINESS ASSOCIATION OF EL PASO, INC., TO PERMIT TEMPORARY SIDEWALK VENDING FOR PARTICIPATING MERCHANTS WITHIN CERTAIN PUBLIC RIGHTS-OF-WAY IN DOWNTOWN EL PASO FROM July 3, 2004 THROUGH JULY 3, 2005. (Fee: \$100.00 per 3' x 9' vending area or \$200.00 per 6' x 9' vending area, SP-04009, *District 8*)

The Special Privilege provides for the following:

- Three (3) locations per merchant with submittal of a plot plan demonstrating spacing compliance per location;
- Choice of two (2) vending area sizes (3' x 9' or 6' x 9'), with all vending restricted to area;

Office Use Only

Mayor's Office (5 copies):	date: _____	time: _____	by: _____
Representative District 1:	date: _____	time: _____	by: _____
Representative District 2:	date: _____	time: _____	by: _____
Representative District 3:	date: _____	time: _____	by: _____
Representative District 4:	date: _____	time: _____	by: _____
Representative District 5:	date: _____	time: _____	by: _____
Representative District 6:	date: _____	time: _____	by: _____
Representative District 7:	date: _____	time: _____	by: _____
Representative District 8:	date: _____	time: _____	by: _____

- No stacking permitted above seven (7) feet;
- Hanging will be permitted within vending area;
- Two (2) correction notices per location will be provided, followed by issuance of citations; upon issuance of third citation, City will take action to rescind location from license; Citations given will be copied to merchant, Grantee and the Department of Planning for monitoring compliance;
- Authorized Equipment: packaging or shipping cardboard prohibited; tables skirted or otherwise adorned; display racks, tables and shelving to be finished or painted; no storage permitted unless screened;
- No advertising except for displays of product cost, each measuring no more than one (1) square foot in size;
- Annual fee of \$100 for 3' x 9' vending area and \$200 for 6' x 9' vending area;
- Requiring five (5) feet of unobstructed sidewalk abutting any vending area for pedestrian use;
- Restricting vending areas within fifteen (15) feet of water hydrants, sanitary sewer manholes and other such structures;
- Requiring a participating merchant to sell merchandise of the type generally sold by the business;
- Prohibiting a participating merchant to rent, lease or otherwise allow the use of an authorized vending area by other non-participating individuals or for the sale of merchandise not sold by the authorized participating merchant; and
- Providing liability insurance for each participating merchant.

As standards are developed, license(s) may be amended to incorporate changes.

c: R. Alan Shubert, Director of Building Permits & Inspections
Terry Cullen-Garney, First Asst, City Attorney
Matt Watson, Asst. City Attorney

AN ORDINANCE GRANTING A SPECIAL PRIVILEGE TO THE CENTRAL BUSINESS ASSOCIATION OF EL PASO, INC., TO PERMIT TEMPORARY SIDEWALK VENDING FOR PARTICIPATING MERCHANTS WITHIN CERTAIN PUBLIC RIGHTS-OF-WAY IN DOWNTOWN EL PASO FROM July 4, 2004 THROUGH JULY 3, 2005

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the Mayor be authorized to execute a Special Privilege on behalf of the City of El Paso, hereinafter referred to as "City," upon the following terms to the CENTRAL BUSINESS ASSOCIATION OF EL PASO, INC., hereinafter referred to as "Grantee:"

1. This Special Privilege shall be in a form that is attached and incorporated as Exhibit "A";
2. The Special Privilege is to permit Grantee the use of various City public rights-of-way within Downtown El Paso for sidewalk vending by participating merchants;
3. As consideration for this Special Privilege, Grantee shall pay the City of El Paso the sum set forth in Section 4 of Exhibit "A," subject to the terms and conditions of this ordinance; and
4. This Special Privilege shall be for a term commencing on July 4, 2004, through July 3, 2005.

PASSED AND APPROVED this 29th day of **JUNE, 2004.**


THE CITY OF EL PASO

ATTEST:


Joe Wardy
Mayor

Richarda Duffy Momsen, City Clerk

APPROVED AS TO FORM:


Matt Watson
Assistant City Attorney

APPROVED AS TO CONTENT:


R. Alan Shubert, Director of Building
Permits & Inspections

THE STATE OF TEXAS)
COUNTY OF EL PASO)

EXHIBIT "A"
SPECIAL PRIVILEGE

This Special Privilege made and entered into this 29th day of **JUNE, 2004**, by and between the **CITY OF EL PASO**, a Texas municipal corporation, hereinafter referred to as the "City," and the **CENTRAL BUSINESS ASSOCIATION OF EL PASO, INC.**, hereinafter referred to as the "Grantee."

WITNESSETH:

WHEREAS, the Grantee is requesting the use of portions of various City public rights-of-way within the Downtown Area to permit sidewalk vending for participating merchants; and

WHEREAS, the City has agreed to allow the Grantee the use of various portions of the City public rights-of-way pursuant to the following conditions,

NOW, THEREFORE, in consideration of the mutual covenants and Special Privileges hereinafter set forth, the City and the Grantee agree as follows:

1. **DESCRIPTION.** The City grants a Special Privilege to the Grantee to temporarily conduct sidewalk vending, hereinafter referred to as the "Event," on portions of the public right-of-way abutting the properties of participating merchants, all such locations to hereinafter collectively be referred to as the "Premises," as more particularly described in Exhibit "B," attached hereto and incorporated herein for all purposes.

2. **USE OF PREMISES.** The Premises shall be used by the Grantee solely for Event purposes. Each location participating in the Event, and identified within Exhibit "B," shall be permitted to conduct sidewalk sales within the "vending area." The "vending area" shall be the area immediately abutting the participating merchant's property, and measuring no more than three foot by nine foot (3' x 9') or six foot by nine foot (6' x 9') with a sales radius of three feet (3'). The vending area size may be divisible, provided that the subdivision does not exceed the maximum square footage permitted per location.

As an express condition of this Special Privilege, the following requirements shall be met:

- (a) The Grantee's use of the Premises shall be solely limited to sidewalk sales of merchandise of the type generally sold by the respective merchant; provided, however, that sales of food or beverage are hereby authorized for only those merchants whose principal business is the sale of food and beverage. Such sales of food or beverage as herein permitted shall be strictly limited to the sale of non-potentially hazardous commercially packaged food or beverage items that are bottled, canned, cartoned, or securely wrapped by a commercial food product establishment as defined by El Paso Municipal Code, Chapter 9.12; and
- (b) Keep a minimum clear width of five (5) feet of unobstructed sidewalk access for pedestrian use abutting the Premises; and
- (c) No equipment, tables, booths, electrical lines, or other structures shall be placed within fifteen (15) feet of any connections to sprinkler systems, water hydrants, water valves, or sanitary sewer manholes on or near the Premises; and
- (d) No equipment, tables, booths, electrical lines, or other structures shall be placed in such a manner that access is obstructed to any entrance or exit of any adjacent business; and
- (e) No advertising, except for displays of product cost, each sign measuring not more than one (1) square foot in size; and
- (f) Each participating merchant shall be allowed a maximum of three (3) vending areas per location with each merchant submitting a plot plan demonstrating spacing compliance;
- (g) Each vending area shall not exceed a three foot by nine foot (3' x 9') or six foot by nine foot (6' x 9') footprint, subject to all requirements stated herein, with all vending restricted to area;
- (h) Vending area size shall be divisible provided that the subdivisions do not exceed the maximum square footage permitted per location;
- (i) No stacking of merchandise shall be permitted above seven (7) feet;
- (j) Hanging of merchandise shall be allowed only within the vending area; and

- (k) Packaging or shipping cardboard shall be prohibited; all tables shall be skirted or otherwise adorned; display racks, tables and shelving shall be finished or painted; no storage permitted unless screened.
- (l) A correction notice shall be issued to a participating merchant upon a finding of non-compliance with the conditions of this Special Privilege. A participating merchant shall receive one (1) correction notice for non-compliance prior to any issuance of citation. After the initial non-compliance correction notice, a citation may be issued for any additional violations. A copy of any written correction notice issued to a respective participating merchant shall be provided by the Director for Building Permits and Inspections, or his designee, to the Grantee and the Planning, Research and Development Department within five (5) working days from the date of issuance. The Director for Building Permits and Inspections, or his designee, shall maintain a written record of all written correction notice(s) issued within the Premises. Written correction notice(s) received from any City enforcement agency may be appealed to the City Deputy Director for Building Permits and Inspections by the respective participating merchant receiving the correction notice. The appeal must be made within ten (10) working days from the date of issuance of the written correction notice(s). Upon the issuance of a third citation on a respective location within the Premises, the particular location shall be subject to termination. Further, each respective participating merchant may be cited by appropriate authorities for non-compliance with the provisions of this Special Privilege and shall be subject to any and all legal penalties as set forth in the El Paso Municipal Code.
- (m) Upon the issuance of a third citation to any event location, Grantee shall be mailed a letter of non-compliance from the Director for Building Permits and Inspections or his designee. Upon issuance of a third letter of non-compliance, the City may revoke the Special Privilege. This provision shall be interpreted as to allow additional remedies to the City in addition to those already provided elsewhere pursuant to this Special Privilege or applicable law.

- (n) Grantee shall retain the right to remove any participating merchant and event location, at its discretion. Grantee shall provide notice to the City of El Paso to effectuate this provision. An event location is no longer part of the Special Privilege premises at the time such a request from grantee is received by the City.

Except as provided in this Special Privilege, nothing herein shall grant any real property interest to the Grantee. This Special Privilege is granted only for the term stated and nothing herein shall be construed to vest any continuing right in the Grantee.

3. **TERM.** Grantee shall be permitted to use the Premises commencing on Saturday July 4, 2004 through Sunday, July 3, 2005, between the hours of 8:00 a.m. to 6:00 p.m. each day. The premises shall remain clear of all vending area items from 6:00 p.m. each day to 8:00 a.m. each day.

The Premises shall be completely vacated and all Events related structures, equipment, and other items should be removed from the Premises no later than 6:00 p.m. on Saturday July 3, 2005.

4. **CONSIDERATION.** As consideration for the use of the Premises, the Grantee shall pay the City One Hundred and no/100 Dollars (\$100) for various vending area's defined as a three feet by nine feet (3' x 9') area, and Two Hundred and no/ Dollars (\$200) for various vending area's as defined as a six by nine-foot (6' x 9') area, for a total amount of Twenty Six Thousand One Hundred and no/100 Dollars (\$26,100) which shall be due prior to the execution of this Special Privilege. Payment(s) shall be in the form of a cashier's check payable to "The City of El Paso" and delivered to the City Office of the City Comptroller. If the El Paso City Council disapproves the Special Privilege, the Office of the City Comptroller shall make a full refund of payment(s) within fifteen (15) days of the denial action. Any consideration paid shall not be refunded and any remaining balance shall be due and payable, not excluding other remedies under law, if this Special Privilege is terminated or canceled under the terms as described herein.

5. **COSTS.** This Special Privilege is granted on the condition that the Grantee pay for all costs associated with the Event.

6. **LEGAL RELATIONSHIP.** The Grantee assumes full responsibility for the planning, coordination, management and production of the Event. Nothing contained herein shall be construed as creating the relationship of employer and employee or principal and agent between the City and the Grantee, and the Grantee shall not be deemed to be an independent contractor. The City shall not be subject to any obligations or liabilities of the Grantee in the setup, operation, production, or take down of the Event. The grant of this Special Privilege shall in no way be construed as co-sponsorship of the Event by the City. Grantee shall ensure strict compliance by participating merchants of all requirements of this Special Privilege and shall provide for the routine enforcement of the Event.

7. **REPAIRS.** Grantee shall keep the Premises in good condition and repair and in a clean, orderly and attractive condition during the term of this Special Privilege. Grantee shall be responsible for all maintenance of the Premises and shall repair any damage to the Premises due to the operation of the Event, at the sole expense of the Grantee.

8. **IMPROPER USE.** This Special Privilege shall not permit or be construed to permit any other private use of the City's right-of-way that impairs its function as a right-of-way. Grantee shall not construct any additional improvements, or make any additions or alterations on or over the City right-of-way, without the prior written consent of the El Paso City Council.

9. **INDEMNITY.** As a condition of the Special Privilege, Grantee shall indemnify, defend and hold harmless the City, its officers, agents, servants and employees from any and all claims, losses, damages, causes of action, suits, and liability of every kind, including all expenses of litigation for injury or death of any person, or for damage to any property, arising out of or in connection with Grantee's use of the public right-of-way, regardless of whether such injuries, death, or damages are caused in whole or in part by the negligence of the City.

10. **TERMINATION.**

(a) A violation by Grantee of any of the requirements specified in this Special Privilege or any violations of the code not specified in this Special Privilege

shall be grounds for termination of the Special Privilege. Termination of the Special Privilege is in addition to any other legal remedies available to the City, including, but not limited to those specified under Chapter 1.08; and

- (b) A respective location authorized under this Special Privilege which upon third citation is issued by City enforcement agency shall be subject to termination of their rights granted under this Special Privilege for the duration of the remaining term of this Special Privilege.
- (c) Permission for vending areas located on El Paso Street from the US/Mexican Border to Paisano Avenue (US 85) and Stanton Street from Paisano Avenue to the US/Mexican Border (US 62) is subject to Texas Department of Transportation's ("TxDOT") continued waiver of Paragraph Seven of General Conditions of the Municipal Maintenance Agreement between TxDOT and the City of El Paso regarding encroachment of vending areas on the aforementioned rights of way as stated in a letter from TxDOT dated June 27, 2002, attached as Exhibit "C". Upon notification from TxDOT to the City that they will no longer waive Paragraph Seven of the Municipal Maintenance Agreement and require the enforcement of removal of encroachment on state or federally designated right of way, the rights granted under this Special Privilege shall be terminated immediately. Upon written notification from a representative of the City of El Paso, the Grantee shall remove all encroachments immediately without any claim of compensation or reimbursement of fees, costs incurred or other damage, whether economic or non-economic.

11. **INSURANCE.** Grantee shall provide public liability insurance for personal injuries and death growing out of any one accident or other cause in a minimum amount of Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00) per person, and Five Hundred Thousand and No/100 Dollars (\$500,000.00) for two (2) or more persons in any one accident, and, in addition, shall provide property damage liability insurance in a minimum sum of One Hundred Thousand and No/100 Dollars (\$100,000.00) for property

damage growing out of any one accident or other cause. These amounts are not a limitation upon the Grantee's agreement to indemnify and hold the City harmless.

Grantee shall maintain said insurance with a solvent insurance company authorized to do business in the State of Texas. The policy shall provide that the insurer will defend against all claims and lawsuits which arise and will pay any final judgment of a court of competent jurisdiction against the City, its officers, agents, servants or employees and Grantee, its officers, agents, servants or employees. All policies shall be in a form acceptable to the City and shall name the City of El Paso, its officers, agents, servants and employees as additional insureds. The Grantee shall file a copy of the policy or a certificate of insurance with the City Building Permits and Inspections Department, the City Clerk, and the City Attorney of the City of El Paso.

Prior to the execution of this Special Privilege by the City Council, the Grantee shall deliver to the City the required certificate of insurance. The policy shall provide that it may not be canceled or the amount of coverage reduced without ten (10) days written notice to the City. Failure to keep the policy in full force and effect throughout the term of the Special Privilege shall be grounds for cancellation of this Special Privilege.

12. **FORCE MAJEURE.** The Grantee understands and agrees that in the event of public necessity, acts of God, or other circumstances beyond the control of the City, it becomes necessary for the City to cancel this Special Privilege, the City may do so without liability of any type to the Grantee and the Grantee forever releases the City from any and all claims whatsoever occasioned by cancellation pursuant to this paragraph.

13. **CANCELLATION.** Should the City at any time or for any reason decide that the public right-of-way onto which the Event is encroaching is needed for a public use or facility, or due to a real or perceived threat to public safety, the City may upon ten (10) days written notice, cancel this Special Privilege at no cost to the City and may take possession of the public right-of-way. All rights of Grantee in the Premises shall then be terminated. Grantee may cancel this Special Privilege, for any reason, upon ten (10) days prior written notice to the City, and all rights of Grantee shall then be terminated.

14. **LIENS AND ENCUMBRANCES.** The Grantee hereby agrees to defend and indemnify and hold harmless the City against any liability and loss of any type arising

from any lien or encumbrance on the Premises, arising from the Grantee's use of the Premises, unless such lien or encumbrance arises from acts or omission of the City.

15. **NON-ASSIGNABILITY.** The rights of the Grantee and the City under this Special Privilege are not assignable. Neither Grantee nor any participating merchant shall be authorized to lease, rent, or otherwise allow the use of any portion of the Premises by any non-participating merchant or for the sale of merchandise not principally sold by a participating merchant.

16. **MISCELLANEOUS.**

A. **Law and Ordinances.** The Grantee shall comply with all statutes, laws, codes and ordinances applicable to Grantee's use or occupancy of the Premises.

B. **Notices.** All notices provided for herein shall be sufficient if sent by certified mail, return receipt requested, postage fully prepaid, addressed to the proper party at the following addresses:

City of El Paso
Attn: Mayor
#2 Civic Center Plaza
El Paso, Texas 79901-1196

with copy to:

City of El Paso
Attn: City Clerk
#2 Civic Center Plaza
El Paso, Texas 79901-1196

and:

CENTRAL BUSINESS ASSOCIATION
OF EL PASO, INC.
Attn: Alonso Flores
201 E. Main Street, Suite 1710
El Paso, Texas 79901

or to such other addresses as the parties may designate to each other in writing from time to time.

C. **Entire Agreement.** This document contains all of the agreements between the parties and may not be modified, except by an agreement in writing signed by both parties.

D. **Severability.** Every provision of this Special Privilege is intended to be severable. If any term or provision hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the Special Privilege.

E. **Law Governing.** The laws of the State of Texas shall govern the validity, performances and enforcement of this Special Privilege.

F. **Venue.** This Special Privilege shall be enforceable in El Paso, Texas, and if legal action is necessary to enforce it exclusive venue shall be in El Paso County, Texas.

17. **BINDING SPECIAL PRIVILEGE.** The individual signing this Special Privilege acknowledges that he or she is authorized to do so, that said individual further warrants that he or she is authorized to commit and bind Grantee to the terms and conditions of the Special Privilege, and that Grantee is a duly authorized and existing corporation that is authorized to do business in the State of Texas. Upon the City's request, Grantee shall provide evidence satisfactory to the City confirming these representations.

18. **RESTRICTIONS AND RESERVATIONS.** This Special Privilege is subject to all rights-of-way, easements, dedications, restrictions, reservations and other encumbrances of record and running with the land. If, at any time during the term of this Special Privilege, or any extension thereof, any such rights-of-way, easements, dedications, restrictions, reservations and other encumbrances of record and running with the land, preclude, interrupt or interfere with Grantee's use of the Premises, Grantee shall have the right to terminate this Special Privilege upon giving the City prior written notice of its intention to do so.

WITNESS the following signatures and seals:

THE CITY OF EL PASO:

ATTEST:

Joe Wardy
Mayor

Richarda Duffy Mumsen, City Clerk

APPROVED AS TO FORM:

Matt Watson
Assistant City Attorney

APPROVED AS TO CONTENT:

R. Alan Shubert, Director of Building
Permits and Inspections

ACCEPTANCE

The above instrument, with all conditions thereof, is hereby accepted this 10
day of June, 2004.

GRANTEE: CENTRAL BUSINESS ASSOCIATION OF
EL PASO, INC.

By: X Alonso Flores
DIRECTOR OF OPERATIONS
(Printed name/title)

ACKNOWLEDGMENT

STATE OF TEXAS)

COUNTY OF EL PASO)

This instrument was acknowledged before me on the 10 day of
June, 2004, by ALONSO FLORES as
Director of Operation, on behalf of CENTRAL BUSINESS ASSOCIATION OF
EL PASO, INC., as Grantee.

My Commission Expires:

Lucy C. Martinez
Notary Public, State of Texas
Notary's Printed or Typed Name:
Lucy C. Martinez

